

MEMORANDUM OF UNDERSTANDING

BETWEEN AND FOR

THE CITY OF FRESNO

AND

THE FRESNO CITY EMPLOYEES ASSOCIATION, INC.

*** * * * ***

FY 1997-1998

FY 1998-1999
FY 1999-2000

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Legend: * * * = deletion of language from previous MOU
bold = new language

ARTICLE I

PREAMBLE

A. PURPOSE

This Memorandum of Understanding (MOU), entered into between the City of Fresno, hereinafter referred to as the City, and the Fresno City Employees Association, Inc., hereinafter referred to as the Association, has as its purposes: the establishment of wages, hours, and other terms and conditions of employment.

B. DEFINITIONS

Unless the particular provision or the context otherwise requires, and, except to the extent that a particular word or phrase is otherwise specifically defined in this MOU, the definitions and provisions contained in Article 3 of Chapter 1, and Sections 2-1501, 2-1601, 2-1801, and 2-1903 of the Fresno Municipal Code (FMC), shall govern the construction, meaning, and application of words and phrases used herein. The definition of each word or phrase shall constitute, to the extent applicable, the definition of each word or phrase which is derivative from it, or from which it is a derivative, as the case may be.

C. GOVERNING LAWS

The employer-employee relationship between the City and its employees and the City and the Association is governed by Chapter 10 of Division 4 of Title I of the Government Code (Section 3500 et seq., commonly known as the Meyers-Milias-Brown Act), and Article 19 of Chapter 2 of the FMC. In the event of any conflict between said laws and this MOU, said laws shall govern.

ARTICLE II

EMPLOYEE RIGHTS

A. GENERAL

The rights of employees, except as expressly modified herein, are as set forth in Section 2-1904 of the FMC. Execution of this MOU by the Association shall not be deemed a waiver of any Association or employee right unless the right is clearly or explicitly modified or restricted herein. * * *

B. NONDISCRIMINATION

The provisions of this MOU shall apply equally to, and be exercised by, all employees in the Non-Supervisory White Collar Unit, as described in Article IV Section E hereof, without discrimination as to age, sex, marital status, handicap, religion, race, color, creed, national origin, union or political affiliation.

C. REPRESENTATION RIGHTS AND RESPONSIBILITIES

1. Rights. All employees in the Unit, as described in Article IV Section E, shall be allowed, subject to such lawful limitations as may be prescribed in the Association's By-Laws, full voice, vote, and influence on positions and proposals of the Association.

2. Responsibilities. Subject to the rights set forth in Section 2-1904 of the FMC, all employees in the Non-Supervisory White Collar Unit, as described in Article IV Section E, acknowledge that the City shall consider the positions and proposals of the Association as the Meet and Confer positions and proposals of all employees, individually and collectively, in said Unit.

D. PERSONNEL FILES

1. * * * The Human Resources Division, under the direction of the Director of Administrative Services, shall maintain the official personnel file for each employee. Each employee may review, or authorize in writing, its review by a designated representative, subject to reasonable rules and regulations, and receive a copy of all material placed in either his or her official file or departmental file. If an employee disagrees with the content of a document placed in either file, it shall be the right of the employee to submit a response to the Director of Administrative

Services to be attached to the document in question and included in the appropriate file. Personnel files are considered confidential and access is limited.

2. * * * Documents, including performance evaluations, retained in the employee's departmental file shall be forwarded to the employee's new department if the employee transfers, promotes, or demotes. The file should be forwarded to Human Resources when the employee leaves City service.

3. Inquiries regarding employment references shall be administered in accordance with * * * City policies, which have been the subject of previous meet and confer between the parties.

ARTICLE III

CITY RIGHTS

A. GENERAL

1. The Association and the City agree that the rights of the City are as set forth in FMC Section 2-1905, to wit:

"(a) The exclusive rights of the City include, but are not limited to, the right to

(1) determine the mission of its constituent departments, divisions, commissions, and boards;

(2) set standards of service and municipal fees and charges;

(3) determine the procedures and standards of selection for employment, assignment, transfer, and promotion;

(4) direct its employees;

(5) take disciplinary action;

(6) relieve its employees from duty because of lack of work or for other legitimate reasons;

(7) maintain the efficiency of governmental operations;

(8) determine the methods, means, and personnel by which government operations are to be conducted;

(9) determine the content of job classifications;

(10) take all necessary actions to carry out its mission in emergencies;

(11) exercise complete control and discretion over its organization and the technology of performing its work."

(b) All rights formerly or presently claimed by or vested in the City on the effective date of this Article and not mentioned in Subsection (a) are retained by the City unless explicitly waived by the City by resolution of the Council or by Council-approved MOU.

2. This MOU is not intended to restrict consultation in good

faith with the Association regarding matters within the right of the City to determine.

3. Nothing in this MOU shall be construed as delegating to others the authority conferred by law on the City, or in any way abridging or reducing such authority.

B. RESERVED RIGHTS

All City rights formerly or presently claimed by or vested in the City on the effective date of this MOU, even though not specifically set forth in Section A above, are retained by the City unless clearly and explicitly modified or restricted in this MOU; provided, that notwithstanding any provisions of this MOU, no City right shall be deemed waived, modified, or restricted unless such waiver, modification or restriction is explicitly and specifically approved by the Council.

ARTICLE IV

RECOGNITION

A. ASSOCIATION RECOGNITION

1. The City acknowledges the Association as the recognized employee organization representing the Non-Supervisory White Collar Unit, and therefore, agrees, to meet and confer in good faith promptly upon request by the Association and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to make every reasonable effort to reach agreement on matters within the scope of representation at least one (1) week prior to the last regular Council meeting at which the City budget must be adopted for the ensuing fiscal year. In order that the meet and confer process may include adequate time for full consideration of the proposals of both parties and for resolution of any impasse, the City shall accept proposals from the Association as early as March 1, **2000**, for any new MOU to be effective on or after July 1, **2000**.

B. ASSOCIATION OFFICERS AND DIRECTORS

A written list of the Officers of the Association and the Association Directors, with the specific areas they represent, shall be furnished to the City immediately after their designation and the Association shall notify the City promptly in writing of any changes of such Association Officers or Directors.

C. ASSOCIATION BULLETIN BOARDS

The City shall provide space, or access to space, for the exclusive use of the Association **for * * * bulletin boards * * ***. The space provided shall be no fewer than 18" X 24". **Bulletin boards may be placed by the Association in locations where there is representation by the Association, except that only one bulletin board shall be placed in a common area where several divisions are represented (e.g., DAS/Personnel). Where divisions are in separate physical locations, a bulletin board may be placed by the Association in each physical location of the division.**

D. NONDISCRIMINATION

1. The City will not interfere with, or discriminate in any way against, any employee by reason of his or her membership in the Association.

2. The Association, in turn, recognizes its responsibility as designated representative and agrees to represent all employees in the Unit without discrimination, interference, restraint, or coercion, subject to the right of such employees to represent themselves individually in their employment relations with the City.

E. RECOGNITION OF UNIT DESCRIPTION

The Non-Supervisory White Collar Unit consists of all employees holding a permanent position, as defined in FMC Section 2-1601.1, in the classes listed in Unit 3, Exhibit 3, of the current salary resolution, as such Unit may be amended from time to time pursuant to the provisions of the FMC.

F. CITY RECOGNITION

The Association recognizes the City Manager of the City, or such other person as he or she may designate in writing, as the designated representative of the City, pursuant to FMC Section 2-1914, and agrees subject to the provisions of Article VIII, to meet and confer in good faith promptly upon request by the City and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to make every reasonable effort to reach agreement on matters within the scope of representation at least one (1) week prior to the last regular Council meeting at which the City budget must be adopted for the ensuing fiscal year.

G. RECOGNITION OF MUTUAL OBLIGATION

The Association and the City recognize and acknowledge their mutual obligation and responsibility to effectuate the purposes set forth in, and to adhere to the conditions and clauses set forth in, this MOU.

H. LOCKOUT AND STRIKE

1. No lockout of employees shall be instituted by the City during the term of this MOU.

2. No strikes, or work stoppage by City employees, as defined in Section 2-1923 of the FMC, shall be caused, instigated, encouraged, condoned, participated in, or honored by the Association or its members during the term of this MOU.

I. PROCEDURES FOR DISPUTE RESOLUTIONS

1. GRIEVANCE PROCEDURE

a. A grievance is a dispute concerning the interpretation or application of any existing City policy, * * * written rule or regulation governing personnel practices or working conditions, including this MOU. A grievance involves the claimed misapplication or misinterpretation of a rule or regulation relating to an existing right or duty; it does not relate to the establishment or abolishment of a right or duty. This procedure shall not apply to any dispute for which there is another established resolution procedure, including but not limited to, appeal to the Civil Service Board, Retirement Board, unfair employer-employee relations charge, fact-finding procedure, or as outlined below.

b. A written grievance must set forth the rule, regulation, policy, or * * * **specific section of the MOU** claimed to have been violated, describe the specific incident or circumstances of the alleged violation, and specify the remedy sought. Any dispute between the parties as to the grievability of an issue or as to whether the requirements of this procedure have been met shall be presented to the Grievance Advisory Committee. The Committee shall rule on the dispute before proceeding with the hearing. The Committee will be bound by the agreement of the parties regarding timeliness.

c. The Association may represent employees covered by this MOU on grievances under the grievance procedure.

d. Association Officers and Directors designated under Article IV Section B of this MOU shall be excused without loss of compensation from their regular duties for such time as is necessary to attend and represent Association members at grievance hearings, beginning at the first level of supervision.

e. The procedure and sequence in filing and processing a grievance shall be as follows:

1. The employee or his/her representative shall discuss the grievance with the employee's immediate supervisor before a written grievance may be filed.

(a) If the grievance is not settled through this discussion, it either may be discussed with the next higher supervisor or a written grievance may be filed with the employee's immediate supervisor. A written grievance must be filed, with a copy being sent to Labor Relations, within * * * **eighteen (18) calendar** days from the time the employee becomes aware, or should have become aware of, the issue or incident giving rise to the problem.

(b) Upon receipt of a written grievance, the immediate supervisor shall give the employee a written reply within * * * **ten (10) calendar** days.

2. Should the employee not be satisfied with the answer received from his/her immediate supervisor, the employee may, within * * * **seven (7) calendar** days, file an appeal to the Department Head. The Department Head shall have * * * **ten (10) calendar** days after receipt of the appeal to review the matter, investigate and provide a written answer to the appeal, explaining clearly his/her decision or proposed action and reasons thereof. The Department Head may confer with the employee and appropriate supervisors in an attempt to bring about a harmonious solution.

3. The City and Association may mutually agree to waive steps (1) and (2) and proceed directly to hearing by the Grievance Advisory Committee when the issue is one over which the employee's supervisor or Department Head has no jurisdiction.

4. If the employee is not satisfied with the decision of the Department Head, he or she may, within * * * **seven (7) calendar** days after receipt of the written reply, file a request for a review of the Department Head's decision to the Grievance Advisory Committee. **The appeal to the Grievance Advisory Committee shall be reviewed by the Association before it is delivered to the Labor Relations Division.**

5. The City and Association may agree to seek resolution of the grievance through mediation using the services of the State Conciliation Service, prior to hearing by the Committee. Time limits for processing of the grievance are automatically

extended for as long as mediation is in process.

6. * * * The Grievance Advisory Committee shall be comprised of three (3) members: One selected by the Association, one selected by the City, and the Chairperson. The Chairperson may be chosen either by mutual agreement of the Association and the City, or by the "strike" method from a list of neutrals provided by the State Mediation and Conciliation Service. If the Chairperson is selected by the strike method from the list of neutrals provided by the State Mediation and Conciliation Service, then the Grievance Advisory Committee shall be comprised exclusively of the selected neutral.

Fees and expenses of the chairperson shall be paid half by the City and half by the Association; provided, however, that the Committee may recommend that the City or the Association pay the total of such fees and expenses should it find that, but for the unreasonableness of that party's posture, the convening of the Committee would not have been necessary. The City and the Association shall select a chairperson within * * * **fourteen (14) calendar** days of the receipt of a grievance requesting review by a Grievance Advisory Committee by the Labor Relations Division.

7. A date for the Committee to convene will be set within * * * **thirty (30) calendar** days from the date that a grievance reaches the Labor Relations Division, provided it meets all criteria for the filing and processing of a grievance. It shall be the responsibility of the initiating party to arrange the hearing.

8. All time limits herein may be extended by mutual agreement of the parties.

9. The Committee shall talk to the employee(s) and the supervisor involved to set forth in writing the facts of the particular situation as objectively as possible and recommend a solution to the City Manager within * * * **thirty (30) calendar** days of its last meeting.

10. The City Manager shall review the decision of the Department Head and recommendations of the Committee, and he/she shall render a written decision to the employee within * * * **fourteen (14) calendar** days after receipt from the Committee.

11. Failure of the employee to file an appeal within the specified time limit for any but the first step of the procedure

shall constitute an abandonment of the grievance process. Failure of the responsible supervisor or official of the City to render a decision within the specified time limit established by this procedure shall automatically move the grievance to the next higher level for action, without action required of the employee.

12. Written reprimands shall not be subject to the grievance procedure. However, a written letter of reprimand shall not be the basis for disciplinary action after three (3) years from the date the letter was issued to the employee. * * *

*** * ***

2. ALTERNATIVE DISPUTE RESOLUTION PROCEDURE

The City and FCEA agree that it is in their mutual interest to resolve disputes in the most expeditious and least expensive manner. In order to resolve certain disputes without resorting to litigation, the parties agree to pursue an alternative dispute resolution process in the form of mediation as set forth in this section.

a. Prior to the filing of an action in any court of competent jurisdiction challenging a decision of the Civil Service Board or a decision of the City Manager concerning a grievance (as defined in this agreement), the party seeking to file such action (hereinafter the "moving party") must provide written notice to the other party.

b. Upon receipt of such written notice, the other party shall make a determination as to whether it wishes to pursue initiation of a mediation process to resolve the threatened litigation. If such party determines to pursue a mediation process, that party must notify the moving party in writing.

c. The parties shall jointly select a mediator and participate in the mediation so long as both parties consider it productive. Subject to their legal ability to do so, the parties shall agree that during the mediation process any statutory or legal deadlines for the filing of the subject litigation shall be waived.

d. Either party may file an action in court concerning the subject dispute under the following circumstances:

1. The mediation process is terminated by either party or

upon mutual agreement.

2. The mediation process has not been concluded but failure to file the action shall prejudice the moving party's ability to file an action in the event the mediation process does not result in resolution.

3. The mediation process has concluded without resolution of the dispute.

This alternative dispute resolution procedure shall also be utilized in the event either party decides to pursue an appeal of a court decision relating to an underlying decision of the Civil Service Board or the City Manager concerning a grievance.

3. PAST PRACTICE

A past practice is defined as a course of conduct which by mutual agreement has been allowed to continue over a period of time. A past practice, which is inconsistent with any existing City policy, written rule or regulation governing personnel practices or working conditions, or the provisions of this MOU, shall be null and void and may be terminated upon written notice to the Association. A past practice not covered by this MOU or City policies and procedures, which is within the scope of representation, may be terminated only after the City has provided the Association with written notice and completed the meet and confer process consistent with the Meyers-Milias-Brown Act.

J. USE OF HEARING OFFICER IN DISCIPLINARY ACTION INITIATED BY CITY

Employees in this unit may select usage of a hearing officer instead of a hearing before the Civil Service Board for disciplinary actions. This usage shall be governed by the provisions of FMC Section 2-1663.1.

K. REVISIONS TO CLASS SPECIFICATIONS

Proposed revisions to specifications for classes contained in the Unit shall be provided to the Association for review and comment prior to their adoption by the Director of Administrative Services.

L. REPRESENTATION OF EMPLOYEES

1. The City recognizes the right of employees in this Unit to be represented by the Association in their employer-employee relationship with the City. An employee whose presence is requested by management to discuss or review an action of the employee has the right to be represented by an officer or director of the Association if it appears that the discussion or review may result in adverse action. Should an employee request such representation, no further discussion or review may occur until a representative is present, except that an unreasonable delay shall not result from such a request. The presence of a representative of the employee's own choosing, who is not an officer or director of the Association, shall satisfy the requirements of this section.

2. This Section does not apply to the normal ongoing employment relationship or supervisor/subordinate relationship between the City and its employees, when such matters as, including but not limited to, work direction, scheduling, and non-disciplinary counseling or performance evaluation, are the subjects of the discussion or review.

3. The President of the Association, or the Vice President, or their designees in the event of their absence, shall be allowed, subject to the approval of the employee's respective supervisor and the needs of the City, not more than forty (40) hours of Leave Without Pay per year, for the conduct of Association business. Approval by the supervisor shall not be unreasonably withheld. Leave taken under this section shall be reported to the Labor Relations Division for purposes of accounting for the hours taken.

4. The Association may use the current time bank balance for Association business. Officials of the Association may, with the advance approval of the Labor Relations Division and operating department, use the time bank hours for: the release of two (2) officers and/or directors for up to a maximum of four (4) hours each, once a month, to attend Association board meetings; and to release special committee members to attend to Association business. The Association agrees all board meetings will be held either before 8:00 a.m. or after 5:00 p.m., so as not to disrupt the normal workday of 8:00 a.m. to 5:00 p.m. The operating departments are not required to grant time off for business if it will require filling the position on an overtime basis or if it interferes with departmental operations.

Any time spent by officials of the Association on such business shall be deducted from the Association's balance.

M. SAFETY

1. The City and the Association shall undertake to promote the realization of the responsibilities of the individual employee with regard to preventing accidents to himself/herself or to his/her fellow employees. In the event any safety or health hazard is detected, it shall be reported promptly to the appropriate supervisor. No employee shall be discharged or otherwise disciplined for bringing to the attention of his/her supervisor any unsafe condition.

2. Employees in the classes of Environmental Control Officer, Industrial Waste Inspector and Lab Technician, who work at the Wastewater Treatment Plant, have the option of seeing the City physician on an annual basis, without charge, for the purpose of receiving a complete blood count, blood chemistry test, and a urinalysis.

N. EXCHANGE OF INFORMATION

The City shall provide to the Association, on a timely basis, a copy of amendments to the A.M., new and amended salary resolutions, new and amended position authorization resolutions, job bulletins for classes in this Unit, a payroll manual and amendments thereto, and, on a monthly basis a list of members of this Unit, with membership in the Association noted on the list.

ARTICLE V

DUES DEDUCTION

A. GENERAL

1. The City shall deduct the dues or benefit premiums, or both, upon proper authorization by an employee who desires a dues deduction in the Non-Supervisory White Collar Unit.

2. If an employee in the Non-Supervisory White Collar Unit desires the City to deduct his/her dues or benefit premiums from his/her paycheck, a deduction authorization shall be made by the employee upon a Dues Deduction Authorization Card in the form specified in FMC Section 2-1919.

3. Pursuant to and in accordance with Section 3502.5 of the Government Code and all the provisions therein, the City and the Association agree that * * * all employees in this Unit shall be required, as a condition of continued employment, to join the Association or to pay the Association a Service Fee. **The agency shop provision shall expire at midnight on June 30, 2000, and the City, upon the request of an employee, shall be under no further obligation to collect a Service Fee on behalf of the Association.**

4. The Service Fee shall consist of, and not exceed the standard initiation fee, periodic dues, and general assessments of the Association. The Association shall neither require a non-member of the Association to make any payment to a Political Action Committee, nor shall the Association include as a part of the Service Fee any amount to be used for political purposes.

5. In the event an employee covered hereunder does not authorize deduction of either Association dues or a Service Fee from his/her paycheck and does not make such payment directly to the Association, the Association shall provide a certification, signed by the Association President, to the City of such failure. Prior to such certification, the Association shall notify the employee of its intent to provide certification to the City, and give the employee an opportunity to respond within thirty (30) days. Certification shall be on a form provided by the City. Such failure by an employee shall constitute grounds for termination by the appointing authority.

6. Exceptions to Subsections 3 and 4 above shall be as provided in Section 3502.5(a) of the Government Code. An employee claiming exemption shall provide proof satisfactory to the City of such exemption, and shall contribute an amount equal to the Service Fee

to either the United Way, CHAD, or the Red Cross. Proof of such contribution shall be required to be submitted to the City monthly.

7. These provisions may be rescinded pursuant to the procedures provided in Government Code Section 3502.5(b).

8. Any disputes regarding the interpretation of this Section shall be resolved through the grievance procedure except that any appeal of a termination resulting from the application of this Section shall be processed in accordance with the provisions of the FMC.

B. EXCEPTIONS TO DUES DEDUCTION AUTHORIZATION CARD

The earnings must be sufficient after other legal and required deductions are made to cover the amount of the dues deduction authorized. When a member is in a non-pay status for an entire pay period, no dues deduction shall be made from future earnings to cover that pay period, nor may the member be required to deposit, nor may he/she deposit with the Controller, the amount which would have been deducted if the member had been in a pay status during that period. In the case of a member who is in a non-pay status during only a part of the pay period, and whose salary is insufficient to cover other legal and required deductions, no dues deduction or deposit shall be made.

C. DUES DEDUCTION CHECK

1. The deduction check covering all such deductions shall be transmitted to:

FRESNO CITY EMPLOYEES ASSOCIATION, INC.
Suite 230, Crocker Building
2135 Fresno Street
Fresno, California 93721

Should the Association elect to have the deduction check transmitted to an address other than that set forth hereinabove, the Association shall so indicate by written notice delivered to the Payroll Section of the City's Accounting Division. A copy of such notice shall also be delivered by the Association to the Labor Relations Division. The City shall transmit the deduction check to the address specified in the notice as early as is practicable after receipt of such notice.

2. The deduction check shall be made in favor of:
FRESNO CITY EMPLOYEES ASSOCIATION, INC.
3. A deduction check will be transmitted at least monthly.

D. DUES CHECK-OFF

Rules governing dues check-off, are set forth in Section 2-1919 of the FMC.

E. ASSOCIATION DUES OR CREDIT UNION DEDUCTION FOR RETIRED FRESNO CITY EMPLOYEES ASSOCIATION MEMBERS

Upon written authorization by a retired member of the Association, the City shall deduct credit union payments and Association dues and benefits from the retirement check of such retired member and forward same to the credit union or Association as designated in such authorization.

ARTICLE VI
MODIFICATIONS

A. GENERAL

1. No written City rule, regulation, or policy governing economic benefits will be affected by this MOU unless explicitly and clearly modified or restricted in this Article.
2. In the event a City rule, regulation, or policy is modified or restricted in this Article, the City shall promptly take such steps necessary to change such rule or regulation or policy by amendment thereof to effect such modification or restriction.

B. SALARY SCHEDULE

1. Effective the first pay period in 1997, following Council approval of this MOU, salaries *** shall be increased by three percent (3%), and shall be as listed on *** Exhibit I.
2. Effective July 1, 1998, *** salaries *** shall be increased by three percent (3%), and shall be as listed on *** Exhibit II.
3. Effective July 1, 1999, *** salaries *** shall be increased by three percent (3%), and shall be as listed on *** Exhibit III.
4. Effective the first pay period in 1997, following Council approval of this MOU, the class of Recreation Leader I shall be eliminated, and the class of Recreation Leader II shall be retitled to Recreation Leader.
 - a. Effective the first pay period in 1997, following Council approval of this MOU, the flat hourly base rates of pay for the class of Recreation Leader shall be eliminated, and a five step monthly salary shall be established as follows:

| | <u>A</u> | <u>B</u> | <u>C</u> | <u>D</u> | <u>E</u> |
|-------------------|----------|----------|----------|----------|----------|
| Recreation Leader | 1157 | 1215 | 1276 | 1340 | 1407 |

Upon converting to the five step monthly salary range, permanent employees shall be placed at the lowest step in the range which is at least five percent (5%) above their June 30, 1997, base rate of pay. This five step monthly salary range shall serve as the base pay used to calculate the salary

increase, as reflected on Exhibit I.

- b. Effective July 1, 1998, the five-step monthly salary range for the class of Recreation Leader, as detailed below, shall serve as the base pay used to calculate the salary increase for July 1, 1998 as reflected on Exhibit II.

| | <u>A</u> | <u>B</u> | <u>C</u> | <u>D</u> | <u>E</u> |
|-------------------|----------|----------|----------|----------|----------|
| Recreation Leader | 1251 | 1314 | 1380 | 1450 | 1523 |

- c. Effective July 1, 1999, the five-step monthly salary range for the class of Recreation Leader, as detailed below, shall serve as the base pay used to calculate the salary increase for July 1, 1999 as reflected on Exhibit III.

| | <u>A</u> | <u>B</u> | <u>C</u> | <u>D</u> | <u>E</u> |
|-------------------|----------|----------|----------|----------|----------|
| Recreation Leader | 1354 | 1422 | 1494 | 1569 | 1648 |

C. FRESNO CITY EMPLOYEES' HEALTH AND WELFARE TRUST

The City and the Association agree that the Fresno City Employees Health and Welfare Trust has the authority to determine the benefits that will be provided during the term of this agreement. The sole responsibility of the City under this clause is to provide a set dollar amount to be contributed to the Trust on behalf of the employees represented by the Association. **The City will contribute only the dollar amount adopted by the Fresno City Employees Health and Welfare Trust for employee benefits during the term of this MOU. * * ***

It is understood and agreed that the City's contributions to the Fresno City Employees Health and Welfare Trust shall not exceed \$461 per month per employee. In the event the premium established by the Trust during the term of this MOU is greater than the City's agreed maximum contribution, the employee will be required to contribute the amount necessary to make up the difference through payroll deductions. In the event the City agrees to contribute an amount higher than the \$461 established herein on behalf of any other recognized bargaining unit whose members participate in the Fresno City Employees Health and Welfare Trust, the City agrees that it will reopen the meet and confer process on this item upon request by the Association.

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D. NIGHT-SHIFT DIFFERENTIAL

1. Each employee in this unit who is regularly assigned to work a "night shift" shall receive premium pay in addition to that set forth for his/her class in Subsection B of this article. For a shift having four (4) or more hours between the hours of 5:00 p.m. and midnight the night shift premium will be \$1.00 per hour for all hours worked that shift. For a shift having four (4) or more hours between the hours of midnight and 8:00 a.m. the night shift premium will be \$1.50 per hour for all hours worked that shift. The Night-Shift Differential will be paid only to an employee who is regularly assigned to the night shift and actually works said shift. The night-shift differential for PI and PPT employees is set forth in Section F. of this article.

E. UNIFORM ALLOWANCE

Effective July 1, 1997:

1. Each employee who is required to purchase, maintain, and wear a duty uniform shall receive twenty dollars (\$20) per month to be prorated on a pay-period-by-pay-period basis.

2. Employees newly hired in the class series of Community Services Officer I/II/Senior, Fire Prevention Inspector I/II/Senior, or in the class of Neighborhood Services Representative I who are required to purchase, maintain, and/or wear an uniform shall receive two hundred sixty-four dollars (\$264) in their first paycheck for the purpose of assisting in the purchase and maintenance of uniforms. Upon completion of the initial six (6) months of the probationary period, employees in these classes shall receive forty-four dollars (\$44) per month to be prorated on a pay-period-by-pay period basis.

a. In the event the newly hired employee works for fewer than six (6) months, the employee shall reimburse the City for one-sixth (1/6) of the two hundred sixty-four dollars (\$264) for each full calendar month not worked, up to six (6) months.

3. Non-probationary employees in the classes of Community Services Officer I/II/Senior, Fire Prevention Inspector I/II/Senior, or Neighborhood Services Representative I who are required to maintain and wear an uniform for four (4) months or more within any fiscal year shall receive forty-four (\$44) per month, to be prorated on a pay-period-by-pay period basis.

a. Nonprobationary employees in the above-mentioned classes who are required to maintain and wear an uniform fewer than four (4) months within any fiscal year shall receive twenty-two dollars (\$22) per month, to be prorated on a pay-period-by-pay-period basis.

4. The *** department agrees to consult with the Association prior to the implementation of any uniform change for employees in the Unit represented by the Association, and the City agrees to meet and confer with the Association before creating a uniform requirement for a new class or for employees in a class which currently is not required to wear a uniform.

F. BENEFITS FOR PERMANENT INTERMITTENT AND PERMANENT PART-TIME EMPLOYEES

Permanent Intermittent and Permanent Part-Time employees, employed in classes in the non-supervisory white collar unit, shall accumulate benefits during their employment with the City as follows:

1. Vacation.

a. Permanent Intermittent employees shall accumulate eight (8) hours vacation leave for each 173.33 hours of non-overtime work paid.

b. Permanent Part-Time employees shall accumulate vacation leave at a rate proportionate to a full-time employee in the class, according to the number of hours scheduled to work.

2. Sick Leave.

a. Permanent Intermittent employees shall accumulate eight (8) hours sick leave for each 173.33 non-overtime hours paid.

b. Permanent Part-Time employees shall accumulate sick leave at a rate proportionate to a full-time employee in the class, according to the number of hours scheduled to work.

c. Refer to Article VI(K) for further applicable provisions.

3. Overtime. Permanent Intermittent and Permanent Part-Time employees shall receive overtime at the applicable hourly rate for work performed in excess of eight (8) hours in a day and/or forty (40) hours in a week, and work performed on a holiday.

4. Probationary Period. The probationary period for Permanent Intermittent and Permanent Part-Time employees shall be * * * 2,080 hours of non-overtime work performed, according to the class to which the employee is appointed, **except as provided in Article VI(CC)(11)(a)**.

5. Health and Welfare. Permanent Intermittent and Permanent Part-Time employees shall receive full Health and Welfare benefits as provided below:

a. Permanent Intermittent employees - the City shall contribute, towards the premium required by the Fresno City Employees Health and Welfare Trust, an amount of money on behalf of the employee in proportion to the percentage of full-time established for his or her position in the Position Authorization Resolution. Contributions will be made on an annualized basis, e.g., if a Permanent Intermittent employee works full-time for six (6) months of the year, the City will pay fifty (50) percent of the contribution as agreed upon under Article VI. Sec. C. each month for twelve (12) months.

If a Permanent Intermittent employee leaves City employment for any reason, the City's obligation to make any payments for Health and Welfare benefits will cease on the date of the employee's termination. The City shall make contributions only on the condition that the employee agrees to contribute to the Health and Welfare Trust the difference between the City contribution to the Trust and the premium amount required by the Trust for the level of benefits provided. If the employee does not agree to make such contribution, then the City shall make no contribution for Health and Welfare. Election to pay such difference shall be made within fifteen (15) days of appointment, and shall be irrevocable except as provided under Sub-paragraph c. below.

b. Permanent Part-Time employees - the City shall contribute, towards the premium required by the Fresno City Employees' Health and Welfare Trust, an amount of money on behalf of the employee in proportion to the number of hours scheduled for that position, as reflected in the Position Authorization

Resolution. The City shall make such contribution only on the condition that the employee agrees to contribute to the Fresno City Employees Health and Welfare Trust the difference between such City contribution and the amount required by the Trust for the level of benefits provided. If the employee does not so agree, then the City shall make no contribution for Health and Welfare for such employee. Election to pay such difference shall be made within fifteen (15) days of appointment, and shall be irrevocable except as provided under Sub-paragraph c. below.

c. An employee who declines to participate in the health plan at employment may elect to participate each year thereafter; however, once participation is elected, and then dropped, the employee will be ineligible to re-enroll. Participation at any time shall be by deduction from the employee's paycheck.

6. Permanent Intermittent employees shall be provided with Social Security benefits, and shall not be members of the Fresno City Employees General Service Retirement System. Until the Retirement Board acts upon the joint recommendation regarding retirement benefits applicable to Permanent Part-Time employees, and any ordinances or resolutions are adopted implementing that action, Permanent Part-Time employees shall not be in the City retirement system and shall be provided with Social Security benefits.

7. Workers' Compensation Benefits for Permanent Intermittent and Permanent Part-Time employees shall be those minimums established by Workers' Compensation regulations.

8. Permanent Intermittent and Permanent Part-Time employees shall be paid for jury duty attendance and court attendance in accordance with FMC Sections 2-1511 and 2-1512.

9. Holidays.

a. Permanent Intermittent employees shall accumulate holiday leave balance at the rate of eight and two-thirds (8 2/3) hours for each 173.33 hours of non-overtime work.

b. Permanent Part-Time employees shall receive paid leave for holidays at a rate proportionate to a full-time employee in the class, according to the number of hours scheduled to work.

10. Shift Differential.

a. Each Permanent Intermittent and Permanent Part-time employee in this unit who is regularly assigned to work a "night shift" shall receive premium pay in addition to that set forth for his/her class in Section B of this Article.

b. Effective August 1, 1994, for a shift having four (4) or more hours between the hours of 5:00 p.m. and midnight, the night shift premium will be \$.50 per hour for all hours worked that shift.

c. Effective July 1, 1995, for a shift having four (4) or more hours between the hours of 5:00 p.m. and midnight, the night-shift premium will be \$1.00 per hour for all hours worked that shift.

d. Effective August 1, 1996, for a shift having four (4) or more hours between the hours of midnight and 8:00 a.m., the night-shift premium will be \$1.50 per hour for all hours worked that shift as paid in accordance with Article VI(D) of this MOU.

11. Service Fee. Section A of Article V of this MOU is applicable to Permanent Intermittent and Permanent Part-Time employees.

12. Uniform Allowance. Any Permanent Intermittent or Permanent Part-Time employee who is required to purchase and wear a uniform shall be paid the uniform allowance applicable to the class, to be prorated and paid **on a pay-period-by-pay-period basis**.

13. Permanent Part-Time and Permanent Intermittent employees shall not be employed to reduce the number of Permanent Full-Time employees in the unit.

* * *

14. Rest Periods - Article VI. Section N shall apply to Permanent Intermittent and Permanent Part-Time employees, but the City reserves the right to combine breaks with the lunch period or the beginning or ending of a shift for employees in the Recreation Division.

G. OVERTIME

Employees shall be paid for overtime in accordance with FMC Section 2-1514, except as may be modified by this MOU.

H. VACATION ACCUMULATION

All employees in the Unit who are employed in permanent positions at fixed monthly or yearly salaries, shall accumulate vacation leave with pay for each completed calendar month of employment at the rate of one and one-twelfth working days after they have been continuously employed by the City for five (5) years or more, but fewer than ten (10) years.

I. HOLIDAY LEAVE

1. * * * **Except as may be modified in this Section, Holidays shall be governed by Fresno Municipal Code Section 2-1513:**

* * * January 1

* * * **The third Monday in January.**

* * * **The third Monday in February.**

* * * **The last Monday in May.**

* * * July 4

* * * **The first Monday in September.**

* * * November 11.

Thanksgiving Day in November.

The Friday after Thanksgiving Day in November.

* * * December 25.

Employee's Birthday

Two Personal Business Days (8 hrs. credited to holiday balance on July 1 and 8 hrs. credited on Jan. 1)

Any day or part of a day declared by the Council, by ordinance or resolution, to be a holiday.

2. **If January 1st, July 4th, November 11th, or December 25th falls upon a Sunday, the Monday following will be observed as the holiday, in lieu of Sunday.**

3. Employees in this Unit may request payment for any holiday leave balance. * * *

4. Employees in this Unit who are scheduled to and do work a regular shift on a holiday may, at the employee's option, elect to receive eight (8) hours of holiday time in lieu of overtime compensation for that holiday.

5. When a holiday falls on a regularly scheduled day off, an employee in this Unit shall be credited with eight (8) hours of holiday time for each holiday occurring on a scheduled day off in lieu of eight (8) hours vacation therefor.

6. If any employee in this Unit is required to and does work on his or her birthday, or his or her birthday falls on a holiday or any regular day off, eight (8) hours shall be credited to the employee's holiday leave balance on the first day of the calendar month following his or her birthday.

7. In addition to any other holiday leave which may be accrued, employees in this Unit in the classes of Emergency Services Dispatcher I, II, and III, shall receive 1.33 hours per month of Holiday leave. Emergency Services Dispatchers may not elect to be compensated for any unused balance of holiday leave accumulated pursuant to this provision.

8. In order to be eligible for holiday compensation, employees must be on paid work status the day before said holiday.

J. CHRISTMAS/NEW YEAR'S HOLIDAY

An employee in this Unit regularly scheduled to work a full shift on December 24 and December 31 shall be allowed four (4) hours of holiday leave on the afternoon of either December 24 or December 31. Employees shall be allowed their choice of days off consistent with maintenance of minimum staffing required by the City. In the event minimum staffing needs do not permit an employee otherwise entitled to use his/her leave on either day, four (4) hours shall be credited to the employee's vacation balance.

K. * * * SICK LEAVE

* * *

1. Members of this Unit shall not be subject to the guidelines of A.M. 14-19.1, City Sick Leave Policy. However, the following City policies shall be in effect:

a) FMC Section 2-1508, Sick Leave and Special Sick Leave provisions shall apply and;

b) Sick leave provisions outlined in A.M. 14-19, Leave of Absence shall apply.

2. A review of usage of each permanent employee shall be performed every six (6) months to determine individual employee sick leave

usage and accrual levels.

a) The following sick leave accrual policy shall be in effect.

i. Full-time permanent employees shall accrue sick leave at the rate of eight (8) hours per month to be added to their sick leave account. This accrual rate shall be deemed the "A" Level.

ii. If after six (6) months the employee has used more than four (4) working days (32 hours for 5/8 workweek; 40 hours for 4/10 workweek) of nonexempt sick leave, the employee shall be notified in writing that continued usage of more than four (4) working days (32 hours for 5/8 workweek; 40 hours for 4/10 workweek) in a six-month period shall result in moving the employee's sick leave accrual rate from the "A" level to the "B" level, which shall be deemed a six-hour per month accrual rate, for the ensuing six-month period. A working day shall mean, for the purpose of this agreement, the regularly scheduled hours of work for the individual employee. The written notification/ warning notice shall expire one (1) year from the date of issue provided the employee does not exceed more than the standard hours (32 hours for 5/8 workweek; 40 hours for 4/10 workweek) of nonexempt sick leave usage during the subsequent six (6) month review cycle.

iii. If after six (6) months from the warning notice described above (ii), the employee has used more than four (4) working days (32 hours for 5/8 workweek; 40 hours for 4/10 workweek) of nonexempt sick leave the employee shall move from "A" Level to "B" Level, and shall accrue sick leave at the rate of six (6) hours per month for the next six (6) months.

iv. If during the following six (6) months the employee has used more than four (4) days (32 hours for 5/8 workweek; 40 hours for 4/10 workweek) of nonexempt sick leave the employee shall move from "B" Level to "C" Level (four (4) hours per month accrual) for the next six (6) months.

v. All accrual rates at the "B" and "C" Levels shall be reinstated to the next highest level every six (6) months when the employee uses less than four (4) days (32 hours for 5/8 workweek; 40 hours for 4/10 workweek) at the "C" Level, and less than four (4) days (32 hours for 5/8 workweek; 40 hours for 4/10 workweek) at the "B" Level.

vi. Subsequent to July 1, 1997, employees shall be subject to the following appealable progressive discipline:

\$100 Fine - Applies to an employee who has remained at the "C" reduced accrual level for three (3) consecutive six (6) month review cycles.

\$200 Fine - Applies to an employee who has remained at the "C" reduced accrual level for four (4) consecutive six (6) month review cycles.

\$300 Fine - Applies to an employee who has remained at the "C" reduced accrual level for five (5) consecutive six (6) month review cycles.

Termination - Applies to an employee who has remained at the "C" reduced accrual level for six (6) consecutive six (6) month review cycles.

vii. If on October 31 of each year, an employee has a balance of 240 or more hours of sick leave, he/she may in November of that year, request a cash payment from 8 to 40 hours of any vacation accrual he or she has acquired prior to the December payroll period.

viii. For Permanent Intermittent and Permanent Part-Time employees, sick leave accrual will be prorated, based on the percentage relative to a full-time equivalent.

3. The following sick leave exemptions shall be subtracted from the employee's usage during the six (6) month review cycle:

a) Sick Leave for Workers' Compensation absences.

b) Special sick leave used for death in the immediate family, or during hospitalization of a member of the immediate family as provided in the FMC Section 2-1508 (i). In case of hospitaliza-tion of a family member, employees must submit a note from the physician stating that the employee's presence is required at the hospital.

c) An employee's ongoing medical condition of a serious nature, e.g., diabetes or chemotherapy. Employees shall be required to

submit a letter from their physician indicating the estimated length and frequency of absences. Illness or injuries of a serious ongoing nature shall be determined by the employee's physician, and documented to the appointing authority for sick leave exemption status for the employee.

d) An employee's pre-approved, scheduled medical or dental appointment of three (3) hours or less. Multiple appointments on the same day, such as those for lab tests and x-rays that take longer than three (3) hours shall be considered exempt. For an appointment of more than three (3) hours, employees shall be required to submit a statement from the medical offices verifying the appointment(s). This does not preclude the department from requiring verification notes for all medical/dental appointments as provided in FMC Section 2-1508 (f). Employees on an Alternative Work Schedule may be required to verify why pre-approved medical/dental appointments cannot be made before or after their scheduled work hours.

e) Surgery, hospitalization and/or physician-ordered recovery periods solely for the employee related to surgery or hospitalization. Employees shall be required to submit a physician's statement.

f) Long-term absence of eighty (80) or more consecutive working hours. Employees shall be required to submit a physician's statement verifying the injury or illness. An employee whose absence would otherwise be exempt under this section, who returns to work for up to eight (8) hours during his/her absence, shall not lose this exemption.

g) Employees may be allowed up to thirty-two (32) hours of accumulated sick leave per fiscal year for Family Sick Leave. The purpose of this benefit is to allow unit employees time to care for members of their immediate family who live in the employees' place of residence. Family Sick Leave may be used to actually care for or arrange for the care of family members who are ill and cannot care for themselves, or to take family members to routine medical or dental appointments. Employees are encouraged to schedule routine medical and/or dental appointments outside of regular work hours when possible. Use of Family Sick Leave shall be authorized and recorded by a department head or designee.

i. In order for Family Sick Leave to be exempt for an employee under reduced accrual, a physician's statement must

be submitted.

4. During the term of this MOU, FCEA agrees to meet and confer, if requested by the City, on the subject of a City-wide sick leave policy.

L. WORKERS' COMPENSATION

1. Notwithstanding the provisions of FMC Section 2-1515, an employee in this Unit who suffers an injury in the course and scope of his/her City employment shall receive eighty-five (85) percent of his/her full wages or salary from the City, beginning on the fourth calendar day of such absence, unless hospitalized on the first day for at least twenty-four (24) hours, or unless the absence exceeds fourteen (14) calendar days, in which case the employee shall receive the pay provided in this Section from the first day. Except for the provision of full pay and its starting date (as modified herein), the remaining provisions of FMC Section 2-1515 shall apply.

2. Partial days of absence due to injury in the line of duty, including the day of injury, shall be at full pay and shall not count toward the three (3) day exclusion period; however, this time shall be recorded as injury absence.

3. At the employee's option, in the event pay from the City is not provided during the first three (3) days of absence due to injury, the employee may take sick leave, vacation, or compensatory time off (CTO), for that period.

4. If the employee has used sick leave, vacation, or CTO for the first three (3) days and it is later determined that pay is applicable from the first day, the leave time shall be restored to the employee and his/her pay adjusted accordingly. If the employee has been on leave without pay for the first three (3) days and it is later determined that pay is applicable from the first day, the employee shall be paid therefor.

5. If an employee is placed on sick leave or vacation, pending determination as to whether the injury is industrial, and the injury is determined to be industrial, sick leave or vacation will be restored and the employee placed on injury leave as provided herein.

6. Retirement benefits shall not be reduced as a result of compensation at the eighty-five (85) percent rate. Changes in contribution by the City and employee shall be in accordance with applicable retirement code sections.

7. The employee's vacation and sick leave accrual will cease beginning 90 days following a determination that the employee's injury is work related and considered workers' compensation leave.

8. Taxes shall not be withheld on compensation at the eighty-five (85) percent rate which is not taxable due to injury in the line of duty. In the event a court of competent jurisdiction, or other competent authority, finds this Section invalid, the provisions of Article VII of this MOU shall apply. Any subsequent agreement reached by the City and the Association on a replacement for this Section shall be made effective back to the date of the determination of the invalidity of this Section.

M. COURT TIME

Each member of the Unit except those members of the Police Department, who, in his or her capacity as an employee of the City, is required by a superior officer, City Attorney, prosecuting attorney, whether or not by subpoena, or by direction of a court if by subpoena, to attend and does attend, during off-duty hours, any deposition or court proceeding as a witness, shall be allowed a minimum of two (2) hours overtime credit regardless of the time actually in attendance.

N. REST PERIODS

Employees in this Unit shall be allowed a rest period not to exceed fifteen (15) minutes during each four (4) consecutive hours of work, without loss of compensation. Rest periods shall be scheduled by supervisors and consistent with the work load and in accordance with the requirements of the department. There shall be no disruption in the provision of service to the public to allow an employee to take a rest period. Any employee required to work four (4) or more hours overtime immediately before or after his/her shift shall be allowed not more than fifteen (15) minutes as a rest period during such overtime work period, and during any subsequent four (4) hour overtime work period.

O. CALL BACK

Each employee in the Unit eligible for paid overtime who is called back to work outside of his/her regularly scheduled work shift shall be paid a minimum of two (2) hours at the applicable hourly rate.

P. FAIR LABOR STANDARDS ACT

When, or if, the Department of Labor promulgates rules and regulations dealing with the enforcement of the FAIR LABOR STANDARDS ACT, the Association and the City agree to meet and confer on any changes in wages, hours or terms and conditions of employment required thereby.

Employees in the Non-Supervisory White Collar Unit may elect to accrue equivalent (CTO) in lieu of cash payment for overtime hours worked. Employees may accrue a CTO balance not to exceed forty (40) hours at any time. Employees who have reached the maximum balance shall be given cash payment for additional overtime hours worked until such balance has been reduced below the maximum allowable. Use of available CTO shall be requested and approved in the same manner as is vacation, and the provisions of FMC Section 2-1510 (g) shall apply. The City may, at its sole discretion and by department, elect to compensate by cash payment all outstanding CTO balances existing as of June 30 of any fiscal year on the next payroll at the straight time hourly rate.

Q. BIWEEKLY PAYROLL SYSTEM

The Association agrees to the implementation by the City of a biweekly payroll system, subject to sixty (60) day prior notice by the City. The City shall consult with the Association on changes in the administration, payment, and accumulation of certain economic benefits to employees required by the implementation of the biweekly payroll system.

R. SALARY LEVEL FOR NEW JOB CLASSES

If, during the life of this MOU, new job classes are created which the City determines appropriate for inclusion in the Non-Supervisory White Collar Unit, or if major and significant revisions are made to the job specifications for a class in this Unit, the City shall provide a copy of the proposed job specifications to the Association and reasonable notice and opportunity to meet and confer prior to action to adopt a salary for the class. If, after a reasonable period of meeting and conferring, agreement cannot be reached, staff, after notifying the Association, shall forward its recommendation to the City Council.

S. PROBATIONARY PERIOD

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* * *

The probationary period for all classes in the Non-Supervisory White Collar Unit shall be twelve (12) months. The probationary period shall be an essential part of the examination process and shall be used for the effective adjustment of the employee to meet the required standard of work. Time spent on any leave of absence, or time during which an employee is unable to perform the full range of duties due to injury or illness, whether or not job-related, shall not be considered as a part of any probationary period, and such time will be added to the probationary period. The City shall conduct employee evaluations during the probationary period pursuant to the provisions of Article VI(DD) of this MOU. All classes designated in a flex class series shall be subject to a twelve (12) month probationary period pursuant to the provisions of Article VI(EF) of this MOU, except as provided in Article VI(CC)(11).

T. TEMPORARY ASSIGNMENT TO PERFORM DUTIES OF ABSENT EMPLOYEES

1. In accordance with FMC Section 2-1650(c) an employee will neither be ordered, nor will be considered to be performing the duties of an absent employee unless prior written approval has been obtained, a signed copy of which will be given to the employee when ordered to perform the duties.

2. After any permanent employee of the Non-Supervisory White Collar Unit has completed ten (10) full working days of service in a higher class pursuant to one (1) or more such assignments, he/she shall thereafter be paid at the rate of pay of the higher class while so assigned.

3. Except where provided herein, temporary assignment to perform duties of absent employees shall be in accordance with FMC Section 2-1650.

U. EDUCATION AND TRAINING FOR CITY EMPLOYEES

1. The City's policy on education and training including the procedure for applying for reimbursement of expenses incurred in connection with all educational and training activities such as conferences, workshops and the tuition reimbursement program are

contained in A.M. Section 14-23, as may be revised from time to time. **Reference to A.M. 14-23 in no way incorporates said section into this MOU.**

2. Permanent employees in the classes of Secretary/Senior Secretary, who acquire a valid Certified Professional Secretary certificate, will be reimbursed in accordance with A.M. 14-23.

V. LAY OFF PROCEDURES

Layoff of employees shall be governed by FMC Section 2-1671.

W. USE OF PERSONAL VEHICLES

Employees may be required, at the discretion of the City, to use their personal vehicles on City business. Employees required to use their own vehicles on City business, other than traveling to and from work, shall be reimbursed in accordance with A.M. 9-1. When use of a personal vehicle is required as a term and condition of employment for all positions in a class, such requirement shall be included in the specification for the class and the job bulletin. If the requirement is applicable only to certain positions in a class, employees, or potential employees, shall be notified of the requirement prior to appointment, transfer, or assignment, as appropriate.

X. ALTERNATIVE WORK SCHEDULES

* * *

1. City departments may establish alternative/flexible work schedule committees for the purpose of review and analysis of work schedules other than the standard 5/8 workweek. The committee will be composed of one permanent employee appointed by FCEA, two permanent employees appointed by the department head or designee from the work unit being evaluated, one permanent employee appointed by FCEA from the unit being evaluated, and one permanent employee appointed by mutual consent of FCEA and the department. The committee shall meet at regular times and places for the purpose of evaluating the effectiveness and desirability of different work schedules. The committee shall give primary consideration to meeting service and operational requirements, productivity, efficiency, impact on supervisorial staff, impact on staffing levels, budgetary impact (e.g., overtime), and employee

preference. One of FCEA's goals in requesting flexible/alternative work schedules is to provide alternatives in the scheduling of medical appointments in order to reduce sick leave usage. Upon completion of the process, the committee shall submit its recommendations to the department head or designee. In the event the department head decides to implement the recommendations of the committee, the department shall submit a written request to the Labor Relations Division. At the request of the City or the Association, the parties agree to meet and confer on the impact of recommended flexible/alternative work schedules. If implemented, the duration of such flexible/alternative work schedules shall be a minimum of three (3) months. To facilitate the consideration process, the City may issue an administrative instruction to provide procedural guidelines for establishing flexible/alternative work schedules.

2. * * * The following shall apply to 4/10 * * * work * * * schedules * * * :

a. Overtime

1) Work in excess of ten (10) hours in one (1) day or on either or both of the first two (2) days off in a workweek shall be compensated at one and one-half (1 1/2) times the straight time hourly rate.

2) Work on the third day off in a workweek or on a holiday which is a regular day off shall be compensated at two (2) times the straight time hourly rate.

3) Ten (10) hours work on a holiday which is a regular workday shall be compensated at normal pay, plus eight (8) hours straight time pay for the holiday.

b. Holidays. Employees on a 4/10 plan shall receive twelve (12) holidays of eight (8) hours, plus their birthday of eight (8) hours. An employee who is off on a holiday which is a regular work day shall receive eight (8) hours pay for the holiday and may elect to take two (2) hours vacation or compensatory time for a full ten (10) hours pay, or may elect to receive two (2) hours leave without pay.

c. Sick leave. Employees shall accumulate eight (8) hours sick leave per month and receive sick leave pay for the number of hours absent.

d. Vacation. Employees * * * shall accumulate the same number

of hours vacation per month as under * * * **the standard 5/8 workweek** * * *.

e. Night Shift Differential. Night shift differential shall be paid as * * * **with the standard 5/8 * * * workweek**, except that an employee on a 4/10 * * * **work schedule** must work five (5) or more hours between the hours of 5:00 p.m. and 8:00 a.m. in order to be eligible.

* * *

[* * * paragraph deleted]

Y. BILINGUAL * * * CERTIFICATION PROGRAM

* * *

1. The bilingual certification program consists of a City administered examination process whereby members of this Unit may apply for a Summer and/or Winter bilingual examination, and if certified by the examiner receive bilingual premium pay for interpreting and translating.

2. Bilingual certification examinations will be conducted two (2) times per year (Summer and Winter). During the examination noticing period, examination applications will be available at the Department of Administrative Services, Human Resources Division and City department personnel units.

a. In order to qualify for the Summer examination, the application must be received by the Human Resources Division during the month of May, but no later than the last regular business day of May.

b. In order to qualify for the Winter examination, the application must be received by the Human Resources Division during the month of November, but no later than the last regular business day of November.

c. Bilingual examination application deadlines are not appealable or grievable.

3. Bilingual certification examinations are conducted for Cambodian, Hmong, Laotian, Sign, Spanish and Vietnamese languages.

4. The bilingual premium pay rate for certified permanent employees is fifty dollars (\$50) per month, regardless of how many languages for which an employee is certified.

a. Certified employees may interpret/translate for departments/divisions they are not assigned to, provided the requesting department/division has a demonstrated customer service related need, and has obtained approval from the certified employee's supervisor.

b. Certified employees shall not refuse to interpret/translate while on paid status. Refusal shall result in appropriate disciplinary action.

c. Except in the event of an emergency, bilingual employees who are not certified shall not be required to interpret/translate.

Z. REQUESTS FOR TRANSFER

1. A permanent employee may request consideration for transfer to vacant positions in the same class by submitting a written request to the Director of Administrative Services. When vacancies occur in the class, names of employees requesting transfer shall be submitted for consideration prior to the certification of names from an eligible list. Transfers between departments require the approval of both appointing authorities. Approval of transfer shall not be unreasonably withheld by the appointing authority in the department from which transfer is sought.

2. The transfer of employees shall be governed by * * * the provisions of the Fresno Municipal Code, except that, effective July 1, 1997, employees in the class of Administrative Clerk I/II/Senior assigned to the Police Department Records Bureau, who are subject to working rotating schedules, must serve in that assignment for a minimum of thirty-six (36) months from the date assigned to the Records Bureau, as provided in Article VI(CC)(13), below.

3. Department management shall notify transfer applicants a minimum of the day before the interview. Employees may agree to be interviewed sooner. Any transfer applicant who is offered a transfer shall have a minimum of twenty-four (24) hours to accept or reject the transfer.

4. Employees who wish to be considered for transfer to another position in the same class within their own Department may do so

by submitting a written request to their appointing authority. The appointing authority shall give first consideration to an employee who requests such a transfer.

[* * * paragraph deleted]

AA. DEPARTMENT REPRESENTATIVES

1. A management representative shall be selected by the City in each major department to act as a liaison between the City and the Association for that department. This person will be the primary contact for the Association on labor relations issues within his/her respective Department.

2. There shall be an annual meeting in September of all the Department representatives and the Association directors to discuss pertinent labor relations issues. The Association and the City shall jointly develop an agenda for this meeting.

BB. RECLASSIFICATIONS

This provision shall apply solely to classifications represented by the Association and is not applicable to reclassifications which have the result of employees moving out of the FCEA unit. In the event of the reclassification of a position to a class of a higher level, the incumbent shall be granted the same status in the new class as he/**she** had in the former class, if the Director of Administrative Services should find that all of the following conditions have been met:

1. That the reason for the reclassification of the position is the gradual accretion of new duties and responsibilities over a period of one (1) or more years immediately preceding the effective date of such reclassification.

2. That the accretion of duties has taken place during the incumbency of the present incumbent in such position.

3. That the added duties and responsibilities upon which reclassification is based have not been previously assigned to a class of the same or lower level.

4. All provisions of the FMC and A.M. regarding reclassification not in conflict with this section remain in effect.

[* * * paragraph deleted]

CC. SPECIAL RULES FOR THE POLICE DEPARTMENT

1. Shift assignments shall be made according to the needs of the department, otherwise shift assignments shall be made based on seniority.

2. Vacation selection by division, section, unit/area, or shift, as determined by the department, shall be based upon, and determined by, seniority within the class, **except for employees in the class of Emergency Services Dispatcher I/II/III which shall be based on date of hire.**

3. Shift changes shall not be used as a method of administering discipline.

4. When a police civilian employee is under investigation and subjected to interrogation by the department, which could lead to disciplinary action as defined below, the interrogation shall be conducted under conditions listed in this Section.

Internal Investigations. Disciplinary action is defined as any action which may lead to dismissal, demotion, suspension, fine in-lieu of suspension, reduction in salary, written reprimand or transfer for the purposes of punishment. An oral reprimand is not within the meaning of disciplinary action.

a. Reasonable Hour. The interrogation shall be conducted at a reasonable hour, preferably at a time when the police civilian employee is on duty, unless the seriousness of the investigation requires otherwise.

b. Off-duty Compensation. The employee shall be compensated if the interrogation occurs off duty.

c. Names of Interrogators. The police civilian employee under investigation shall be informed prior to such interrogation of the rank, name and command of the officer in charge of the interrogation and all others who will be present at the interrogation.

d. Nature of Interrogation. The police civilian employee under investigation shall be informed of the nature of the investigation prior to any interrogation.

e. Reasonable Period. The interrogation session shall be for a reasonable period, taking into consideration the gravity and complexity of the issue being investigated.

f. Personal Necessities. The person under interrogation shall be allowed to attend to his own personal, physical necessities.

g. Absence of Threats, Promises of Reward and Publicity. The police civilian employee under interrogation shall not be subjected to offensive language or threatened with disciplinary action. However, a police civilian employee shall be informed that failure to answer questions directly related to the investigation or interrogation may result in disciplinary action.

No promise of reward shall be made as an inducement to answering questions.

The employer shall not cause the police civilian employee under interrogation to be subjected to visits by the press or news media without his/her express consent, nor shall his/her home address or photographs be given to the press or new media without his/her express consent.

h. Record of Interrogation. The interrogation may be recorded, and if it is, the police civilian employee shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time.

i. Own Recording. The police civilian employee being interrogated shall have the right to bring his/her own recording device and record any and all aspects of the interrogation.

j. Notes of Stenographer. The police civilian employee shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential. No notes or reports which are deemed to be confidential may be entered in the police civilian employee's personnel file.

k. Exclusions. Excluded from the above are discussions with police civilian employees in the normal course of duty, counseling, instruction, informal, verbal admonishment, routine or unplanned contact with a supervisor.

This Section shall not apply to an investigation concerned

solely and directly with alleged criminal activity.

5. Rights of Representation Upon Request.

Whenever an interrogation focuses on matters which are likely to result in disciplinary action against any police civilian employee, that employee, at his/her request, shall have the right to be represented by a representative of his/her choice who may be present at all times during such interrogation. The representative shall not be a person subject to the same investigation.

This section shall not apply to any discussions with a police civilian employee in the normal course of duty, counseling, instruction, informal verbal admonishment, or other routine or unplanned contact with a supervisor or any other police civilian employee. This Section shall not apply to an investigation concerned solely and directly with alleged criminal activities.

6. Right of Privacy.

No police civilian employee shall be required or requested for purposes of job assignment or other personnel action to disclose any item of his/her property income, assets, source of income, debts or personal or domestic expenditures (including those of any member of his/her family or household) unless such information is obtained or required under state law or proper legal procedure.

7. Right of Privacy Extended to Storage Space.

No police civilian employee shall have his/her locker or other space for storage that may be assigned to him/her, searched except in his/her presence, or with his/her consent, or unless a valid search warrant has been obtained or where he/she has been notified that a search will be conducted. This Section shall apply only to lockers or other space for storage that is owned or leased by the employing agency.

8. Language shall be included on oral reprimands which states that when signing, an employee makes no admission of guilt regarding the statements included in the reprimand. Oral reprimands will be retained only in the Police Department's divisional files. Employees are entitled to a copy of any oral reprimand they receive.

9. Article VI Section FF. applies only to members of this Unit who are assigned to the Police Department. This section shall

take precedent over any other conflicting section of this MOU.

10. Court Appearances

Notwithstanding the provisions of FMC Section 2-1514, the following rules shall apply to court appearances.

a. If an employee receives a departmental notice or subpoena requiring a court appearance on the employee's regularly scheduled day off, or on vacation, or on a day off on compensatory time-off which has been approved prior to notice and/or the employee's receipt of a departmental notice or subpoena, the employee shall have the option of:

- i. standing by at home, when legally permitted, or,
- ii. appearing at the Court Liaison Office, with a minimum of three (3) hours pay at one and one half (1 1/2) times the rate of pay. During this three (3) hour period, if the employee is not required to appear in court, he/she may, at the option of the Department, be required to perform duties as assigned at Headquarters. The employee shall be released from duty when the subpoena or notice is cancelled or the Court releases the employee.

b. If an employee receives a departmental notice or subpoena requiring a court appearance on a regular day of work which falls outside of assigned work hours, the employee shall have the option of:

- i. standing by at home, when legally permitted, or
- ii. appearing at the Court Liaison Office, with a minimum of two (2) hours pay, at one and one half (1 1/2) times the rate of pay. During this two (2) hour period, if the employee is not required to appear in court, he/she may, at the option of the Department, be required to perform duties as assigned at Headquarters, or
- iii. if the court appearance starts within one-half (1/2) hour immediately following a shift, the employee shall receive a one (1) hour minimum. If the court appearance falls during the shift and continues beyond the end of the shift, the employee shall be paid at the applicable hourly rate for the actual time spent in court.

c. The provisions of Paragraph 10 shall apply to employees who are required to appear in any judicial or administrative

proceeding as a witness pursuant to subpoena, court order, or request of the District Attorney. This provision shall apply to all judicial proceedings (civil, criminal, or administrative) and Civil Service proceedings in which an employee's presence is ordered, directed, or requested because of his/her employment.

d. Where an employee's appearance extends beyond the applicable two (2) or three (3) hour minimum, the employee shall be paid for the actual time of the appearance.

e. The City and the Association agree to meet, as necessary, to discuss concerns involving the Court Liaison Program.

11. Emergency Services Dispatchers

a. The probationary period for employees in the Emergency Services Dispatcher I class assigned to the Police Communications Bureau shall be up to eighteen (18) months, at the discretion of management.

* * *

b. Emergency Services Dispatchers who are placed on sick leave verification will not be acceptable as a replacement for purposes of * * * available overtime, with the exception of orderback.

12. Police Resource Optimization System (PROS)

The Department may utilize the Police Resource Optimization System (PROS) to determine the number and scheduling of shifts, the number and configuration of policing areas, the number of Community Services Officer I/II/Senior employees assigned to each shift, and the day off configuration and/or rotation of days off.

13. Records Clerks Incentive

Employees in the class of Administrative Clerk I/II/Senior assigned to the Police Department Records Bureau, who are subject to working rotating schedules, must serve in that assignment for a minimum of thirty-six (36) months from the date assigned to the Records Bureau before being permitted to transfer out of the Police Department Records Bureau, unless there is mutual agreement between the employee and the Records Bureau Manager to waive the minimum thirty-six (36) month assignment requirement.

As an assignment incentive, effective July 1, 1997, Administrative Clerk I/II/Senior employees assigned to the Police Department Records Bureau, who are subject to working rotating schedules, will receive an assignment incentive bonus of six hundred dollars (\$600) on the first pay period following the first anniversary date of said assignment, nine hundred dollars (\$900) on the first pay period following the second anniversary date of said assignment, and twelve hundred dollars (\$1,200) on the first pay period following the third and any subsequent anniversary dates of said assignment.

14. Labor-Management Committee

There is created a Labor-Management Committee (hereinafter LMC) in the Police Department, the purpose of which shall be to evaluate issues and concerns of the Department and/or employees, which issues are of themselves not subject to the meet and confer process. The City and FCEA recognize that implementation of recommendations of the Committee may be subject to the meet and confer process, and agree that it is not the purpose of the LMC to substitute for or interfere with that process.

The LMC shall be composed of two members selected by FCEA, two members selected by the Police Chief, and a fifth member selected by mutual agreement between the City and FCEA.

The City and FCEA shall select the issues to be evaluated by the LMC. After completion of its evaluation, the LMC shall submit a written report to the Police Chief and FCEA. If the parties agree and implementation of the recommendation(s) does not change wages, hours or other terms and conditions of employment, the parties may implement the recommendation(s) (subject to any budget constraints). If implementation of the recommendations requires meet and confer by the parties, either party may make such a request in writing of the other party, which request shall not be unreasonably withheld.

If no agreement is reached regarding the implementation of the recommendation of the LMC, no action may be taken to implement such recommendations by either party.

DD. EMPLOYEE PERFORMANCE EVALUATIONS

1. Effective July 1, 1998, each City department shall * * * conduct, at a minimum, annual employee performance * * * evaluations on a department-wide basis for all non-probationary

employees * * * which shall be the basis for movement to the next highest step for the class, up to level "E". The standard for movement to the next higher step shall be that the employee has consistently met the performance requirements of the position during the preceding rating period.

2. Supervisors shall complete quarterly evaluations on probationary employees. Two (2) evaluations shall be conducted during the first six (6) months and two (2) during the second six (6) months. * * *

3. An employee who disagrees with the content of a performance evaluation which does not result in the denial of a step advancement may within * * * fifteen (15) calendar days from the date of receipt of the performance evaluation:

a. Write a rebuttal statement for attachment to the performance evaluation form; and/or

b. Request further review with the supervisor of the reviewer, but in no case higher than the department head.

4. In the event a performance evaluation results in an employee being denied advancement to the next higher step, the employee may appeal the decision to a review committee by filing a written request with the department director within seven (7) calendar days from the date of receipt of the performance evaluation.

5. The department director shall convene a review committee within fifteen (15) calendar days following the receipt of the written appeal. The review committee shall be comprised of a representative selected by the employee, a representative selected by the department director, and a third member mutually agreed to by the first two. In the event an agreement cannot be reached concerning the third member of the committee, the Labor Relations Manager and the FCEA Business Agent shall select one by mutual agreement.

6. The employee shall present the reasons for the appeal on his/her own behalf, and the person who conducted the evaluation shall present the basis for the denial of the step advancement. In order to expedite the process, only oral and documentary information shall be presented. The deliberations of the committee shall be confidential and no other individuals shall be present. The committee's findings shall be issued at the conclusion of the hearing and shall be final and binding. In the event the committee

rules in favor of the employee, the step advancement shall be implemented retroactive to the date the increase would have occurred.

7. An employee not receiving a step increase shall have an additional performance evaluation within six months. At the sole discretion of the department director, the step increase may be granted as a result of the six-month evaluation if the director determines that the employee has corrected the performance deficiencies which were the basis for not receiving the step increase. The six-month evaluation is not appealable.

8. It is understood and agreed by the parties that if a performance evaluation is not presented to the employee within fifteen (15) calendar days following the date the step increase is to become effective, the employee will be considered to have met the performance requirements of the position during the preceding rating period.

9. * * * Evaluations for non-probationary employees are not to take the place of disciplinary/corrective actions as outlined in A.M. 14-13.

10. * * * Employee performance evaluations are not subject to the grievance procedure.

EE. FLEXIBLE STAFFING

Flexible staffing will be in accordance with A.M. 14-11 and 14-11.1.

Any contemplated addition or deletion of a flexibly staffed class shall be discussed with the Association, in a timely manner and prior to such action by the Director of Administrative Services.

FF. TEMPORARY MODIFICATION OF WORK HOURS

a. The City may, with seventy-two (72) hour notice to the employee, temporarily modify the employee's working hours due to backlog/workload concerns. This provision is not intended to address working hours modified as a result of daylight savings hours or overtime. This temporary modification shall not exceed one (1) month, unless mutually agreed to by the parties.

b. The City and employees or the Association may mutually agree to flexible work hours for employees who work an 8:00 a.m. to 5:00 p.m. workday. Both the City and the Association retain the right to withdraw the mutual agreement and return to an 8:00 a.m. to 5:00 p.m. schedule.

[* * * paragraph deleted]

[* * * paragraph deleted]

[* * * paragraph deleted]

GG. PREMIUM PAY

Effective July 1, 1997:

Certificate Pay

1. Permanent employees in the class of Planner II, who possess and maintain a valid State of California registration/license as a Civil Engineer, Structural Engineer, Electrical Engineer, Traffic Engineer, or Architect, shall be paid an additional five (5) percent of his or her base rate of pay.

2. Permanent employees in the classes of Accountant-Auditor I/II, who possess and maintain a valid State of California license as a Certified Public Accountant, shall be paid an additional five (5) percent of his or her base rate of pay.

Temporary Assignment Pay

1. Permanent employees in the class of Engineering Inspector II, whose assigned duties, related solely to a specific project, are of more than normal complexity or scope, may be paid at the comparable associate consultant I step level.

2. Permanent employees in the class of Senior Administrative Clerk assigned to the Police Department Records Bureau midnight shift may be assigned, at management's sole discretion, Records Supervisor functions (e.g., shift briefing and work assignment coordination) when the Records Supervisor is on his or her scheduled days off, and there is no other supervisor assigned to

the midnight shift. A Senior Administrative Clerk shall be paid three and one-half per-cent (3.5%) above his or her base rate of pay for the time while so assigned. Said temporary assignment pay shall not exceed records Supervisor "E" step. This provision shall expire upon written notification by Police Department Records Bureau to the Labor Relations Division that modifications to staffing or scheduling permit two Records Supervisor positions to be assigned to each shift.

3. Permanent employees in the classes of Community Services Officer II (CSO) and Property and Evidence Technician (PET) assigned training functions and responsibilities shall be paid an additional five (5) percent of his or her base rate of pay for the actual time spent training. Actual hours worked as a trainer in excess of eight (8) hours in a day, or forty (40) hours in a workweek, shall be paid at one and one-half (1 1/2) times the CSO/PET training assignment rate of pay. CSO's and PET's may not elect to accrue compensatory time off in lieu of cash payment for actual hours worked as a trainer in excess of eight (8) hours in a day, or forty (40) hours in a workweek. Receipt of this pay for functioning as a trainer is a temporary assignment, not a promotion. Training assignments, as well as the extension or expiration of such an assignment, are determined solely by the department.

HH. CLASS REVIEWS

The City agrees that during the term of this MOU it will complete class reviews for the classes of Fire Prevention Inspector I/II, Planning Illustrator I/II, Recreation Leader and Recreation Specialist. If it is determined that a need exists for the establishment of any new classes, the City shall meet and confer with the Association on salary when the review is completed, but prior to any Council action.

ARTICLE VII

SEVERABILITY

In the event any article, section, or portion of this MOU should be held invalid and unenforceable in any court of competent jurisdiction, such decision shall apply only to the specific article, section, or portion thereof specifically specified in the court's decision, and upon issuance of such a decision, the City and the Association agree to immediately meet and confer upon a substitute for the invalidated article, section, or portion thereof.

It is intended that this MOU sets forth the full and entire understanding of the parties, and any previous understanding or agreements by the parties regarding any such matters are hereby superseded and terminated in their entirety. With respect to side letter agreements, any not attached to this MOU are hereby terminated in their entirety. Side letter agreements attached to this MOU shall continue in force subject to the terms contained therein, or in the absence of specified terms the side letter agreements shall terminate upon the expiration of this MOU. Any side letter agreements entered into during the term of the MOU shall continue in force subject to the terms and conditions set forth in each side letter. Further, neither party shall be bound by any promise or assurance that is not explicitly covered in this MOU, or in a side letter agreement signed by both parties. This paragraph is not intended to prevent either party from relying on discussions which occurred during the meet and confer process for the purpose of clarifying the meaning of this MOU.

ARTICLE VIII

TERMINATION

* * *

This Memorandum of Understanding shall become effective only after ratification by the members of FCEA, followed by City Council approval and the expiration of the waiting period for the Mayor's action provided in Charter sections 605 and 609, and shall remain in full force and effect through June 30, 2000.

During the life of this Memorandum of Understanding, should either party desire to modify its terms or to meet and confer as to matters within the scope of representation not addressed in this Memorandum of Understanding, such party shall request in writing to meet and confer on the item, which item shall be specified in writing. During the life of this Memorandum, either party may refuse such request without explanation if the item is directly related to or is an item directly considered herein, or if the item was included in a written proposal of either party during the meet and confer process which led to this agreement.

It is agreed by the parties that the City may request to meet and confer on amendments to this Article during the life of this Memorandum of Understanding. Further, the parties agree that, if no agreement is reached on amendments to this Article, neither party may take action on such amendment(s) without the consent of the other party.

IN WITNESS WHEREOF, the parties hereto set their hands this ____ day of _____, 1997.

FOR THE ASSOCIATION:

Gene Zimmerman
Business Agent

Kari Alverson
President

FOR THE CITY:

Jorge C. Aguiñiga

Labor Relations Manager

Ron Anderson
Asst. Director of Public

Utilities

Penny Hupp
Vice President

Gary Kirchner
Human Resources Manager

Brett Rawlings
Parliamentarian

Clay Durbin
Communications Bureau Manager

Anthony Fagone
Director

Matt Gargiulo
Management Analyst III, DAS

Deborah Maggy
Director

Kay C. Hartman
Senior Human Resources Analyst

FCEA.703

Attachments

